

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

<b>ARZELL WILKERSON,</b>	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	
	)	
<b>CAPITAL ONE BANK,</b>	)	<b>CIVIL ACTION NO.</b>
<b>Defendant/Third Party Plaintiff,</b>	)	<b>2:05 CV 1192-W</b>
	)	
<b>vs.</b>	)	
	)	
<b>ANTHONY WILKERSON,</b>	)	
<b>Third Party Defendant</b>	)	

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**THIRD-PARTY COMPLAINT OF CAPITAL ONE BANK**

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COMES NOW, Defendant/Third-Party Plaintiff Capital One Bank (“Capital One”) in accordance with this Court’s order dated January 19, 2007, and pursuant to Rule 14 of the Federal Rules of Civil Procedure, files this Third-Party Complaint against Anthony Wilkerson. As grounds therefore, Capital One states as follows:

**The Parties & Jurisdiction**

1. Defendant/Third-Party Plaintiff Capital One Bank is a federally insured bank chartered under the laws of the Commonwealth of Virginia and with its principal place of business in the Commonwealth of Virginia.

2. Third-Party Defendant Anthony Wilkerson (“Wilkerson”) is an individual over the age of twenty-one (21) who is believed to be a resident of Montgomery, Alabama. Upon information and belief, Wilkerson is the son of Plaintiff, Arzell Wilkerson.

3. This Court has jurisdiction over this matter, and specifically this Third-Party Complaint, pursuant to 28 U.S.C. § 1332 and 28 U.S.C. § 1367.

**Facts Common to All Counts**

4. Capital One adopts and incorporates the allegations contained in paragraphs one (1) through three (3) of the Third-Party Complaint, the same as if fully set forth herein.

5. Plaintiff Arzell Wilkerson filed a Complaint and an Amended Complaint against Capital One alleging that, among other things, Capital One violated the Fair Credit Reporting Act in reporting that Plaintiff owed a debt that she alleges she did not incur. (A copy of the Amended Complaint is attached hereto as Exhibit "A"). In her Amended Complaint, Plaintiff Arzell Wilkerson alleges that "At the time of the transactions in question herein Capital One, F.S.B. allowed an imposter to open numerous credit card accounts using the personal identifiers of the plaintiff." (Ex. A, ¶ 8). As such, Plaintiff's claims are predicated on the alleged issuance of a credit card in her name without her purported knowledge or consent.<sup>1</sup>

6. On or about November 15, 2001 a Capital One credit card application was completed in the name of Plaintiff Arzell Wilkerson.

8. Plaintiff Arzell Wilkerson contends that she did not complete the application and that the completion of the application was done without her consent or

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<sup>1</sup> Capital One denies any and all claims and allegations asserted by Plaintiff in her Complaint and Amended Complaint as evidenced by Capital One's Answer already on file with this Court.

authorization. Based upon information and belief, the application was completed by Arzell Wilkerson's son - - Anthony Wilkerson. Upon information and belief, Anthony Wilkerson used the credit card to make multiple purchases and never made payments on the credit card account.

9. Capital One denies that it committed any wrongful acts. Any of Plaintiff's alleged damages were caused by the wrongful and/or criminal acts of Third-Party Defendant Anthony Wilkerson. Specifically, the Third-Party Defendant completed the credit card application in Plaintiff Arzell Wilkerson's name and incurred a debt on the credit card account. These two actions form the predicate of Plaintiff Arzell Wilkerson's Complaint against Capital One.

10. As to the specific claims and counts of the Third-Party Complaint, Capital One states as follows:

### **COUNT ONE**

11. Capital One adopts and incorporates the allegations contained in paragraphs one (1) through ten (10) of the Third-Party Complaint, the same as if fully set forth herein.

12. Based on the foregoing, the Third-Party Defendant's actions and/or inactions were the direct and proximate cause of any and all of the alleged damages caused to Plaintiff Arzell Wilkerson as asserted in her Complaint against Capital One. To the extent Capital One is found liable to Arzell Wilkerson, Third-Party Defendant Anthony Wilkerson is liable to Capital One for all of Plaintiff Arzell Wilkerson's claims against Capital One.

**COUNT TWO**

13. Capital One adopts and incorporates the allegations contained in paragraphs one (1) through twelve (12) of the Third-Party Complaint, the same as if fully set forth herein.

14. Third-Party Defendant Anthony Wilkerson intentionally, fraudulently and deceitfully completed the application for the Capital One credit card at issue. Furthermore, Third-Party Defendant intentionally, fraudulently and deceitfully made charges on the account at issue. The Third-Party Defendant knew that the representations on the application were false. Capital One reasonably relied upon these representations to its detriment and Capital One could not have discovered the alleged fraud when the application was completed. These wrongful actions resulted in foreseeable damages to Capital One.

15. Moreover, the Third-Party Defendant's actions constitute theft by deception. As a result of the Third-Party Defendant's wrongful actions, Capital One has been damaged and requests any and all actual, compensatory and punitive damages that are available at law. Capital One further requests costs and attorney's fees.

**COUNT THREE**

16. Capital One adopts and incorporates the allegations contained in paragraphs one (1) through fifteen (15) of the Third-Party Complaint, the same as if fully set forth herein.

17. Third-Party Defendant, Anthony Wilkerson utilized, accepted, and retained the benefit of the Capital One account opened in Plaintiff Arzell Wilkerson's name. The account has a balance which is unpaid and past-due.

18. Capital One therefore demands full payment on the open account, together with attorneys' fees, interest and cost as allowed in its cardholder agreement. Capital One has been damaged and requests any and all actual, compensatory and punitive damages that are available at law.

19. Third-Party Defendant, Anthony Wilkerson has been unjustly enriched by his use of the Capital One account. Capital One has been damaged and requests any and all actual, compensatory and punitive damages that are available at law.

20. Third-Party Defendant, Anthony Wilkerson breached his contract with Capital One and Capital One is therefore entitled to recover attorneys' fees, interest and cost as allowed in the cardholder agreement. Capital One has been damaged and requests any and all actual, compensatory and punitive damages that are available at law.

WHEREFORE, PREMISES CONSIDERED, Defendant/Third-Party Plaintiff Capital One Bank demands indemnification and/or reimbursement from Third-Party Defendant, Anthony Wilkerson for any and all awards, judgments, costs and fees awarded to Plaintiff Arzell Wilkerson for which Capital One is found liable. In addition to indemnification, Capital One demands any and all damages including, but not limited to, actual, compensatory and punitive damages, attorney's fees and costs that are available

at law or otherwise.

Respectfully submitted, this the 2nd day of February, 2007.

s/ Ramsey Duck

RIK S. TOZZI

C. RAMSEY DUCK

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**Please Serve Third-Party Defendant By Hand:**

Anthony Wilkerson

4375 Wares Ferry Road

Montgomery, Alabama 36109

**CERTIFICATE OF SERVICE**

I hereby certify that on February 2, 2007, I served a copy of the foregoing by U.S. Mail to the following individual:

Norman Hurst Jr., Esq.  
Attorney for the Plaintiff  
462A Sayre Street  
Montgomery, Alabama 36104-4124

/s/ Ramsey Duck  
OF COUNSEL